

AMENDED IN SENATE JANUARY 4, 2016

AMENDED IN SENATE MAY 4, 2015

SENATE BILL

No. 603

Introduced by Senator Hueso

February 27, 2015

An act to add Section 686.3 to the Penal Code, relating to criminal proceedings.

LEGISLATIVE COUNSEL'S DIGEST

SB 603, as amended, Hueso. Defendant: acting as his or her own attorney (in pro per).

The California Constitution provides that a victim of crime is entitled to be treated with fairness and respect for his or her privacy and dignity throughout the criminal justice process. Existing law also provides that in a criminal action the defendant is entitled to appear and defend in person and with counsel, except as specified, and to confront the witnesses against him or her.

Existing law makes it a crime for a person to practice law in this state unless he or she is a member of the State Bar.

This bill would require a court to conduct a hearing to determine whether intermediary standby counsel ~~or another person~~ shall be appointed, at county expense, for the limited purpose of presenting the defendant's examination of the victim, upon a motion by the ~~prosecutor,~~ *prosecutor or* at the request of a victim, ~~or upon the court's own motion,~~ if a defendant is acting as his or her own attorney in the proceeding and if the victim's testimony will involve a recitation of the facts of ~~one of specified alleged felony offenses committed against the victim, including any felony offenses~~ *offense* for which a convicted defendant is required to register as a sex offender. The bill would require the hearing on the

motion to be conducted outside the presence of the jury and would provide that the hearing shall not require the testimony of the victim. The bill would authorize the court to appoint intermediary standby counsel ~~or, if intermediary counsel is not available, to conduct the examination or to appoint any individual the court deems fit to conduct the examination~~, if the court makes specified findings, including that the denial of the defendant's personal examination of the victim, and the use of another person or the court to present the defendant's examination of the victim, is necessary to protect the victim from trauma, as specified. ~~The bill would also exempt the appointed intermediary standby counsel from sanctions and from liability in an action for malpractice brought by the defendant against that counsel for his or her service in that capacity, as specified. The bill would also exempt a person from criminal prosecution for the unlawful practice of law for engaging in activities he or she is authorized to perform pursuant to these provisions.~~ By imposing a higher level of service on counties, the bill would impose a state-mandated local program. The bill would also include legislative findings and declarations and a statement of legislative intent.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 686.3 is added to the Penal Code, to read:
- 2 686.3. (a) The Legislature hereby finds and declares all of the
- 3 following:
- 4 (1) ~~Sexual abuse, child abuse, stalking, and violent abuse~~ crimes
- 5 are some of the most difficult crimes to detect and prosecute, in
- 6 large part because there are often no witnesses except the victim,
- 7 *because of the victim's reluctance to report*, and because of the
- 8 extreme psychological harm to the victims. ~~Victims of sex crimes,~~
- 9 ~~child abuse, stalking, and other violent sexual abuse~~ crimes have

1 a right to be protected from further victimization by the alleged
2 perpetrator of the crime. These victims have constitutional rights,
3 as enumerated in Marsy's Law, to be treated with fairness and
4 respect for their dignity, to be free from intimidation, harassment,
5 and abuse throughout the criminal justice process, and to be
6 reasonably protected from the defendant.

7 (2) A defendant generally has the right to represent himself or
8 herself in a criminal proceeding, and the right to confront his or
9 her accusers in court. However, courts have held that this right is
10 not absolute, and where the reliability of the testimony is otherwise
11 ensured, the defendant's rights may be outweighed by important
12 public policy concerns.

13 (3) Courts are entitled to control the mode of witness
14 interrogation, so as to more effectively ascertain the truth and
15 protect the witness from harassment or further trauma. Courts have
16 held that a state's interest in the physical and psychological
17 well-being of victims and witnesses may be sufficiently important
18 to outweigh, in some cases, a defendant's right to face his or her
19 accuser or accusers in court.

20 (4) The state has a compelling interest in protecting the physical
21 and psychological well-being of victims of sex offenses, child
22 abuse, stalking, and other violent crimes. offenses.

23 (b) It is the intent of the Legislature in enacting this section to
24 provide the court with ~~authority~~ discretion to employ alternative
25 court procedures to protect the rights of victims of an alleged sexual
26 assault, child abuse, stalking, and other crimes assault, as described
27 in subdivision (c), so the victims are able to participate truthfully
28 and effectively in criminal proceedings when the alleged
29 perpetrator is acting as his or her own attorney, which is also
30 referred to as acting in pro per. In exercising its authority, the court
31 shall balance the rights of the defendant against the need to protect
32 victims of those crimes and to preserve the integrity of the court's
33 truthfinding function. This authority is intended to be used
34 selectively when the facts and circumstances in the individual case
35 present compelling evidence of the need to use these alternative
36 procedures.

37 (c) Notwithstanding any other law, if the defendant is acting as
38 his or her own attorney, the court, upon a motion by the prosecutor,
39 prosecutor or at the request of a victim, or upon the court's own
40 motion, shall conduct a hearing to determine whether intermediary

standby counsel, shall be appointed, at county expense, for the limited purpose of presenting the defendant's examination of the victim. ~~If intermediary standby counsel is not available, the court may appoint any individual the court deems fit to conduct the examination, or the court may conduct the examination.~~ The court may order intermediary standby counsel ~~or the appointed individual to conduct the examination, or the court may conduct to present~~ the examination, if the court makes all of the following findings:

(1) ~~The victim's testimony will involve a recitation of the facts of any of the following alleged offenses committed against the victim:~~

(A) ~~A felony offense that is subject to sex offender registration pursuant to Section 290.~~

(B) ~~Felony stalking pursuant to Section 646.9.~~

(C) ~~Felony elder abuse pursuant to Section 368.~~

(D) ~~Felony domestic violence pursuant to Section 273.5.~~

(E) ~~Felony child abuse pursuant to Section 273a, 273ab, or 273d.~~

(1) *The victim's testimony will involve a recitation of the facts of any felony offense that is subject to sex offender registration pursuant to Section 290.*

(2) The prospect of the defendant personally presenting the examination of the victim creates an emotionally traumatic situation for the victim ~~that is more than de minimis.~~ *would substantially impair the victim's ability to communicate.*

(3) The denial of the defendant's personal examination, and the use of intermediary standby counsel to present the defendant's examination of the victim, is necessary to protect the victim from that trauma.

(d) The hearing on the motion pursuant to subdivision (c) shall be conducted outside the presence of the jury and shall not require the testimony of the victim. The court's findings pursuant to subdivision (c) may be established by evidence of the facts of the underlying incident, the defendant's subsequent behavior, and through witnesses including, but not limited to, the victim, victim advocate, therapist, counselor, parent, or family member.

(e) ~~If the victim testifies at the hearing brought pursuant to subdivision (c), the questioning of the victim shall be conducted by the court. The prosecutor and defendant shall be permitted to submit proposed questions to the court prior to the hearing.~~

(f)

1 (e) When the court orders intermediary standby counsel ~~or the~~
2 ~~appointed individual~~ to present the examination of the victim
3 pursuant to this section, ~~or when the court presents the examination,~~
4 the court shall ~~do all of the following:~~ *make a brief statement on*
5 *the record, outside the presence of the jury, of the reasons in*
6 *support of its order. The reasons shall be set forth with sufficient*
7 *specificity to permit meaningful review and to demonstrate that*
8 *discretion was exercised in a careful, reasonable, and equitable*
9 *manner.*

10 (1) ~~Make a brief statement on the record, outside the presence~~
11 ~~of the jury, of the reasons in support of its order. The reasons shall~~
12 ~~be set forth with sufficient specificity to permit meaningful review~~
13 ~~and to demonstrate that discretion was exercised in a careful,~~
14 ~~reasonable, and equitable manner.~~

15 (2) ~~Instruct the jury that although another person, or the court,~~
16 ~~is presenting the defendant's questions of that witness, the~~
17 ~~defendant is continuing to represent himself or herself, and that~~
18 ~~the jury is to draw no negative inferences against the defendant~~
19 ~~from the use of another person or the court to facilitate the~~
20 ~~examination of that particular witness or to speculate as to the~~
21 ~~reasons for another person's or the court's participation.~~

22 (g)
23 (f) When the court orders the examination of the victim be
24 presented by ~~another person, or when the court conducts the~~
25 ~~examination,~~ *the intermediary standby counsel,* the defendant shall
26 submit the entire line of questioning to the ~~other person or the~~
27 ~~court, including any followup questions, and intermediary standby~~
28 ~~counsel, with sufficient time for counsel to prepare any followup~~
29 ~~questions, and shall have the right to contemporaneously direct~~
30 ~~the other person or the court intermediary standby counsel~~ during
31 the examination to ensure the defendant maintains control of his
32 or her defense. The defendant shall remain personally subject to
33 court procedures and the rules of evidence.

34 (h) ~~The appointed intermediary standby counsel who performs~~
35 ~~merely as the presenter of the defendant's proposed examination~~
36 ~~of the victim pursuant to this section shall not be subject to~~
37 ~~sanctions imposed by a court or by the State Bar for presenting~~
38 ~~the defendant's proposed examination. The appointed intermediary~~
39 ~~standby counsel shall not be subject to liability for malpractice for~~
40 ~~presenting the defendant's proposed examination in an action~~

1 brought by the defendant against that counsel for his or her service
2 in that capacity. A person who is appointed pursuant to this section
3 shall not be subject to criminal prosecution pursuant to Section
4 6126 of the Business and Professions Code for engaging in
5 activities he or she is authorized to perform pursuant to this section.
6 SEC. 2. If the Commission on State Mandates determines that
7 this act contains costs mandated by the state, reimbursement to
8 local agencies and school districts for those costs shall be made
9 pursuant to Part 7 (commencing with Section 17500) of Division
10 4 of Title 2 of the Government Code.